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Cleveland, Ohio 44113

Court of Common Pleas

AMENDED COMPLAINT \$75
March 8, 2019 15:08

By: WEDNESDAY M. SZOLLOSI 0075655

Confirmation Nbr. 1647129

STATE OF OHIO, EX REL. MIKE DEWINE, ETC.

CV 17 881301

vs.

ARCO RECYCLING, INC., ET AL.

Judge: SHANNON M. GALLAGHER

Pages Filed: 13

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

**STATE OF OHIO, ex rel.
DAVE YOST
OHIO ATTORNEY GENERAL,**
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215,

Plaintiff,

v.

ARCO RECYCLING, INC.
Terri Brunsdon, Statutory Agent
2251 Front Street, Suite 206
Cuyahoga Falls, Ohio 44221

ARCO RECYCLING, INC.
P.O. Box 13171
Fairlawn, Ohio 44314

and

1705 NOBLE ROAD PROPERTIES, LLC
Terri Brunsdon, Statutory Agent
2251 Front Street, Suite 206
Cuyahoga Falls, Ohio 44221

1705 NOBLE ROAD PROPERTIES, LLC
P.O. Box 13171
Fairlawn, Ohio 44314

and

**RESIDENTIAL COMMERCIAL
INDUSTRIAL (R.C.I.) SERVICES, LLC**
Latasha Atteberry, Statutory Agent
101 N. Zane Highway
Martins Ferry, OH 43935

and

CASE NO. CV 17 881301

JUDGE SHARON M. GALLAGHER

CHRISTINA BEYNON

P.O. Box 13171

Fairlawn, Ohio 44334

christinabeynon@att.net

and

GEORGE MICHAEL RILEY

a.k.a. ANTHONY MICHAEL CASTELLO

c/o Leanne Woodford

1112 North 9th Street

Martin's Ferry, Ohio 43935,

Defendants.

**AMENDED COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES**

Defendants, Arco Recycling, Inc., 1705 Noble Road Properties, LLC, Residential Commercial Industrial (R.C.I.) Services, LLC, Christina Beynon, and George Michael Riley a.k.a. Anthony Michael Castello (collectively referred to as “Defendants”) endangered the environment and the community of East Cleveland by allowing over 300,000 cubic yards of construction and demolition debris (“C&DD”) to be unlawfully disposed on real property located at 1705 Noble Road in East Cleveland, Ohio (the “Arco Site”). Defendants’ actions resulted in a 321,994 cubic yard pile of C&DD that towered over the homes located mere yards away from the pile. Without the protections afforded by obtaining a license to dispose of C&DD, there was no way to ensure that this pile of debris has not caused environmental harm.

Plaintiff, the State of Ohio, on relation of the Attorney General, Dave Yost, and at the written request of the Director of Environmental Protection (“Director”), hereby institutes this

action to enforce Ohio's C&DD laws, codified in R.C. Chapter 3714 and the rules promulgated thereunder. Plaintiff alleges as follows:

GENERAL ALLEGATIONS

The Defendants

1. Defendants Arco Recycling, Inc., 1705 Noble Road Properties, LLC, Christina Beynon, and George Michael Riley a.k.a. Anthony Michael Castello ("Riley") owned and/or operated an unlicensed C&DD facility located at 1705 Noble Road, East Cleveland, Cuyahoga County, Ohio.

2. Defendant Residential Commercial Industrial (R.C.I.) Services, LLC ("RCI Services") is a demolition company and trucking service owned and/or operated by Riley that transported and disposed of construction and demolition debris at 1705 Noble Road, East Cleveland, Ohio.

3. Defendant Arco Recycling, Inc. ("Arco Recycling") is an Ohio corporation with a business address of P.O. Box 13171, Fairlawn, Ohio 44314.

4. Defendant 1705 Noble Road Properties, LLC is an Ohio limited liability company with a business address of P.O. Box 13171, Fairlawn, Ohio 44314.

5. Defendant RCI Services is a foreign Limited Liability Company organized under the laws of the Commonwealth of Massachusetts and registered to do business in the State of Ohio as a foreign limited liability company transacting business under the name Residential Commercial Industrial Services, LLC.

6. Defendant Christina Beynon is an Ohio resident who lives in Summit County, Ohio.

7. Defendant George Michael Riley a.k.a. Anthony Michael Castello is an Ohio resident whose last known address is c/o Leanne Woodford, 1112 North 9th Street, Martin's Ferry, Ohio 43935.

8. Defendants are the proper parties to be named in this Complaint. At all times relevant to this Complaint, each Defendant is, and has been, a “person” as that term is defined by R.C. 1.59(C), 3714.01(H), and Ohio Adm.Code 3745-400-01(P)(1).

The ARCO Site

9. At all times relevant to this Complaint, the Arco Site has been an unlicensed “construction and demolition debris facility,” as that term is defined in Ohio Adm.Code 3745-400-01(C)(3).

10. The Arco Site was formerly owned by the City of East Cleveland (“City”) pursuant to its Land Reutilization Program under R.C. Chapter 5722. On March 4, 2014, the City passed Resolution No. 11-14 as an emergency resolution, which authorized the sale of the Arco Site (Parcel No. 673-01-011) to Ohio Rock, LLC, for the purchase price of \$125,000. However, according to the records filed with the Cuyahoga County Recorder, the City transferred the property to “1705 Noble Road Properties, LLC” – not Ohio Rock, LLC – on May 1, 2014. 1705 Noble Road Properties, LLC remains the owner of the Arco Site as of the date of this Amended Complaint.

11. Upon information and belief, beginning on or about June 24, 2014 and continuing through January of 2017, Defendants Arco Recycling, 1705 Noble Road Properties, LLC, Beynon, and Riley allowed C&DD to be disposed of at the Arco Site.

12. Defendants Arco Recycling, Beynon, and Riley represented that they were “recycling” the C&DD at the Arco Site. In order to qualify as C&DD recycling, the C&DD must be processed and “returned to commerce as a commodity for use or exchange in a legitimate market

or for use in a beneficial manner that does not constitute disposal.” Ohio Adm.Code 3745-400-01(R)(1).

13. Records from the period between June 24, 2014 and January 2017 show that little, if any, of the C&DD that was brought onto the Arco Site was ever removed to be returned to commerce or to be properly disposed.

14. Records from August 22, 2014 to August 25, 2015 show that Defendant RCI Services was transporting and illegally dumping construction and demolition debris materials at the Arco Site.

15. Beginning on July 21, 2017 and continuing to March 23, 2018, the Ohio EPA removed 321,994 cubic yards of C&DD material from Arco Site at a cost of \$9,143,860.47.

Ohio EPA and Board of Health Administrative Actions

16. On January 17, 2017, the Director of Ohio EPA (“Director”) issued Final Findings and Orders to Defendant Arco Recycling. The Final Findings and Orders required Defendant Arco Recycling to: 1) cease acceptance and disposal of C&DD at the Arco Site immediately; 2) remove all processed and unprocessed C&DD from the Arco Site in compliance with R.C. Chapter 3714 immediately; and 3) submit documentation of the removal to Ohio EPA within fourteen days of the effective date of the Final Findings and Orders.

17. Defendant Arco Recycling appealed the Final Findings and Orders to the Ohio Environmental Review Appeals Commission on January 30, 2017.

18. On June 16, 2017, Arco filed a voluntary dismissal ending the appeal on June 20, 2017.

19. Defendants Arco Recycling, 1705 Noble Road Properties, LLC, and Beynon ceased accepting waste at the Arco Site after the Final Findings and Orders were issued to Defendant

Arco Recycling. As of February 22, 2019, the State estimates that 321,994 cubic yards of C&DD were illegally disposed of at the Arco Site.

20. On May 24, 2017, the Cuyahoga County Board of Health held an evidentiary hearing regarding the Site and made findings of fact and conclusions of law.

21. The Cuyahoga County Board of Health found that the Site forced neighboring residents to endure “loud construction noises, dust, odors [and] a large unsightly dump pile [...],” that the residents of East Cleveland had have continually complained about the “blight created by the ARCO operation,” and that the Defendants’ use of the property had generated a large public outcry.

22. As a consequence of these findings, the Cuyahoga County Board of Health legally declared the Site to be a public nuisance.

Applicable Law and Jurisdiction

23. Revised Code 3714.13(A) through (C) provides that no person shall violate any section of R.C. Chapter 3714, any rule adopted thereunder, or any order issued pursuant to that chapter.

24. “Disposal” of C&DD is defined, in pertinent part, as the “discharge, deposit, injection, dumping, spilling, leaking, emitting, or placing of any construction and demolition debris into or on any land or ground or surface water or into the air * * * .” R.C. 3714.01(D); Ohio Adm.Code 3745-400-01(D)(3).

25. Ohio Adm.Code 3745-400-01(I)(2) defines “illegal disposal” of C&DD as the disposal of C&DD at any location other than a C&DD disposal facility operated in accordance with R.C. Chapter 3714 and Ohio Adm.Code 3745-400 and 3745-37; a solid waste disposal facility

operated in accordance with Ohio Adm.Code 3745-27 and licensed in accordance with Ohio Adm.Code 3745-37; or as otherwise authorized by Ohio Adm.Code 3745.

26. At all times relevant to this Complaint, Defendants Arco Recycling, and Beynon established, operated, and maintained an unlicensed C&DD facility at the Arco Site.

27. All rules cited in this Complaint were properly adopted pursuant to R.C. 3714.02 and R.C. Chapter 119.

28. This matter was referred to the Attorney General for enforcement upon written request from the Director of Ohio EPA pursuant to R.C. 3714.11

29. Defendants' activities that gave rise to this Complaint were conducted in Cuyahoga County. Pursuant to Civ.R. 3(B), venue is proper in this Court.

30. Pursuant to Civ.R. 8(A), Plaintiff states that it is seeking civil penalties in excess of twenty-five thousand dollars (\$25,000).

COUNT ONE
OPERATING AND MAINTAINING AN UNLICENSED C&DD FACILITY

31. The allegations in paragraphs one through twenty-seven of the Complaint are incorporated by reference in this Count as if fully rewritten herein.

32. Revised Code 3714.06(A), Ohio Adm.Code 3745-37-01(C), and Ohio Adm.Code 3745-400-11(C)(1) provide that no person shall establish, operate, or maintain a C&DD facility without first receiving a license issued by either the board of health or the Director of Ohio EPA.

33. Ohio Adm.Code 3745-400-01(C)(3) defines "construction and demolition debris facility" or "facility" as "any site, location, tract of land, installation, or building used for the disposal of construction and demolition debris."

34. At no time prior to the filing of this Complaint have Defendants applied for, or been issued, a license to establish, operate, or maintain a C&DD disposal facility at the Arco Site from either the board of health or the Ohio EPA.

35. Beginning on or about June 24, 2014, Defendants routinely disposed of or allowed disposal of C&DD at the Arco Site, resulting in over 321,994 cubic yards of material illegally disposed C&DD material.

36. Defendants did not remove any of the C&DD unlawfully disposed at the unlicensed C&DD facility located at the Arco Site.

37. The Arco Site is not now, and has never been, a licensed C&DD disposal facility.

38. Defendants Arco Recycling, 1705 Noble Road Properties, LLC, Beynon, and Riley violated R.C. 3714.06(A) by operating an unlicensed C&DD facility at the Arco Site beginning, on or around June 24, 2014 and continuing to on or about January 17, 2017.

39. The acts and omissions alleged in this Count constitute violations of R.C. 3714.13(A) and (B), R.C. 3714.06(A), Ohio Adm.Code 3745-37-01(C), and Ohio Adm.Code 3745-400-11(C)(1), for which Defendants Arco Recycling, 1705 Noble Road Properties, LLC, Beynon, and Riley, are jointly and severally subject to injunctive relief pursuant to R.C. 3714.11 and for which they are jointly and severally liable to pay to the State of Ohio a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each violation pursuant to R.C. 3714.11, including each day of violation after the filing of this Amended Complaint.

COUNT TWO

ILLEGAL DISPOSAL OF CONSTRUCTION AND DEMOLITION DEBRIS

40. The allegations in paragraphs one through thirty-seven of the Amended Complaint are incorporated by reference in this Count as if fully rewritten herein.

41. Ohio Adm.Code 3745-400-04(A), in pertinent part, sets forth the methods by which C&DD shall be disposed.

42. Ohio Adm.Code 3745-400-04(B) provides that no person shall conduct or allow the illegal disposal of C&DD, as defined in Ohio Adm.Code 3745-400-01.

43. Beginning on or about June 24, 2014 and continuing to January 17, 2017, Defendants conducted or allowed the illegal disposed of C&DD on the Arco Site.

44. Upon information and belief, beginning on or about June 24, 2014 and continuing to the March 23, 2018, Defendants violated Ohio Adm.Code 3745-400-04(B) by failing to lawfully dispose of the C&DD illegally disposed on the Arco Site.

45. The acts and omissions alleged in this Count constitute violations of R.C. 3714.13(A) and (B) and Ohio Adm.Code 3745-400-04(B), for which Defendants Arco Recycling, 1705 Noble Road Properties, LLC, RCI Services, Beynon, and Riley, are jointly and severally subject to injunctive relief pursuant to R.C. 3714.11 and for which they are jointly and severally liable to pay to the State of Ohio a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each violation pursuant to R.C. 3714.11, including each day of violation after the filing of this Amended Complaint.

COUNT THREE

FAILURE TO COMPLY WITH DIRECTOR'S FINAL FINDINGS AND ORDERS

46. The allegations in paragraphs one through forty-one of the Complaint are incorporated by reference in this Count as if fully rewritten herein.

47. Revised Code 3714.13(C) provides that “no person shall violate an order issued under this chapter.”

48. On January 17, 2017, the Director issued Final Findings and Orders to Defendant Arco Recycling. Pursuant to the Final Findings and Orders, Defendant Arco Recycling was required to do the following, in compliance with R.C. Chapter 3714 and the rules promulgated thereunder: (1) cease acceptance of C&DD immediately; (2) cease disposal of C&DD immediately; (3) complete the removal of all processed and unprocessed C&DD from the Arco Site immediately; and (4) submit documentation of compliance with Order Number 3 within fourteen (14) days of the date of the Final Findings and Orders.

49. Defendant Arco Recycling has not accepted any C&DD at the Arco Site since January 17, 2017, in compliance with Order No. 1 of the Final Findings and Orders. However, Defendant Arco Recycling did not remove any of the C&DD from the Arco Site. Removal only began when Ohio EPA secured the Site and initiated the process on July 21, 2017. This removal by Ohio EPA was completed on March 23, 2018.

50. The acts and omissions described in this Count constitute violations of R.C. 3714.13(C) for which Defendant Arco Recycling, pursuant to R.C. 3714.11 is subject to injunctive relief and liable for a civil penalty of up to ten thousand dollars (\$10,000.00) per day for each violation, including each day of violation after the filing of this Complaint.

COUNT FOUR COMMON LAW PUBLIC NUISANCE

51. The allegations in paragraphs one through forty-six of the Complaint are incorporated by reference in this Count as if fully rewritten herein.

52. Since, on or about June 24, 2014, Defendants' illegal disposal of C&DD and operation of a C&DD facility without a license created a condition that is offensive to the senses of the

surrounding community and interferes with the rights, general health, and welfare of the public; thereby, constituting an unreasonable use of property to the detriment of the public.

53. By and through the Defendants conduct as described in this Complaint, these Defendants have significantly interfered with the public health, the public peace, the public comfort, and/or the public convenience of neighboring businesses and residents.

54. The Defendants knew or had reason to know that the acts alleged in this claim for relief of the Complaint have constituted a threat to or a significant interference with the rights of the public.

55. By reason of Defendants' continuing nuisance, the public has suffered damages that are irreparable and cannot be fully compensated by law. These Defendants are responsible for abating this nuisance and are liable to the Plaintiff for compensatory damages including, but not limited to, the costs of personnel time for investigating, inspecting, preparing and bringing this action and all other costs in addressing the public nuisance caused by the Defendants.

56. The State, through its Attorney General, is entitled to injunctive relief to abate and enjoin this nuisance.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the State of Ohio, respectfully requests that this Court award Plaintiff the following relief from Defendants:

- A. Permanently enjoin Defendants from violating R.C. Chapter 3714 and the rules adopted thereunder;
- B. Permanently enjoin Defendants and their agents, representatives, employees, successors, or assigns, under the names that they presently use or any other names they use through

any corporate or other devise, and those acting in concert and participation with Defendants directly or indirectly, from engaging in the acts or practices of which the State complains;

- C. Grant to Ohio EPA, its contractors, employees, agents, and assigns access to the Arco Site and use of soils on the property belonging to Defendants for the purpose of disposal and/or closure of the site in the event that Defendants fail to perform removal and disposal of all C&DD and solid waste located at the property;
- D. Order Defendants to reimburse Ohio EPA \$9,143,860.47 for the full cost of removal and disposal of all C&DD and solid waste located at the Arco Site;
- E. Order Defendants to pay all the costs and fees of this action, including the State of Ohio's attorney fees and other extraordinary litigation and enforcement costs;
- F. Order Defendants, pursuant to R.C. 3714.13(F), to pay into the state treasury to the credit of the environmental remediation fund created pursuant to R.C. 3734.281, a civil penalty of \$10,000 per day for each day of each violation alleged in the Complaint, including any violations occurring after the filing of the Complaint. Preliminarily and permanently order and enjoin Defendants to provide Ohio EPA, its contractors, agents, and assigns access to the Arco Site for the purpose of inspecting Defendants' compliance with R.C. Chapter 3714, the rules adopted thereunder, and any Order or Decree issued by this Court in this suit
- G. Retain jurisdiction of this suit for the purpose of making any Order or Decree the Court may deem necessary at any time to enforce and administer Defendant's compliance with, and to carry out, this Court's judgment; and

H. Grant such other relief as may be necessary and appropriate in law or equity.

Respectfully submitted,

DAVE YOST
OHIO ATTORNEY GENERAL

\Wednesday M. Szollosi
SARAH T. BLOOM ANDERSON (0082817)
LAUREN N. CHISNER (0098048)
Assistant Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Floor
Columbus, Ohio 43215-3400
Telephone: (614) 466-2766
Sarah.Anderson@OhioAttorneyGeneral.gov
Lauren.Chisner@OhioAttorneyGeneral.gov

WEDNESDAY M. SZOLLOSI (0075655)
Assistant Attorney General
Environmental Enforcement Section
Toledo Regional Office
One Government Center, Suite 1340
Toledo, Ohio 43604-2261
Telephone: (419) 245-2550
Facsimile: (877) 626-9316
Wednesday.Szollosi@OhioAttorneyGeneral.gov

Counsel for Plaintiff, the State of Ohio